## REMARKS/ARGUMENTS

**I. Preliminary Remarks Regarding This Response.**

In the Status section of the Office Action, it was indicated that the Office Action was responsive to communication(s) filed on 18 September 2002, and that the action was both Final and Non-final. In a telephone conversation on 15 October 2003 Applicants discussed these issues with the Examiner.

The Examiner stated that the Office Action was Non-final, and this is how it was entered into the PALM system. The Office Action actually was responsive to the Request for Continued Examination filed on 2 June 2003. The date of 18 September 2002 was entered in error, and the date will be changed in the system to 2 June 2003.

**II. Amendments to Claims.**

Applicant has amended the claims to limit them to "a biologically active composition comprising melengestrol acetate, a combination of melengestrol acetate and trenbolone acetate, or a combination of melengestrol acetate, trenbolone acetate and estradiol." In addition, Applicant has limited the claims by deleting as a delivery vehicle "encapsulants where the coating wall material is highly soluble in body fluids" such that microparticles would not be included as a claimed composition.

**III. Claim Objection.**

Claim 36 is objected to because it was presented as both a marked up copy and a clean copy in the 2 June 2003 Response. It was unclear whether Applicant was submitting it under the old rule or the new rule.

Claim 36 is presented in the listing of claims, which begins on page 2 of this paper, as a marked up version under the new-rule format. Applicant respectively submits that this objection has been overcome and requests withdrawal of the objection.

**IV. Claim Rejections – 35 USC § 103.**

Claims 26-47 remain rejected under 35 USC 103(a) as being unpatentable over Lewis (US Patent 5,288,496) in view of Herbert et al. (US patent 5,654,008) and Okada et al. (US Patent 4,652,441) for the reasons of record set forth in the prior office actions and for further reasons stated in the Office Action.

Applicant respectfully traverses this rejection. Applicant respectfully submits that the amendments to the claims presented in this paper overcome this rejection.

Applicant maintains the arguments set forth in prior responses, as applicable, in addition to the remarks set forth here.

As stated in the MPEP (§2141), to support an obviousness rejection, four basic criteria must be met. These are (A) The claimed invention must be considered as a whole; (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (D) Reasonable expectation of success is the standard with which obviousness is determined. Clearly for prior art to render an invention obvious, it must render obvious the whole invention and not merely some part of the invention (*In re Antonie* 559 F.2d 618, 620, 195 USPQ 6,8 (CCPA 1997). The prior art must also be considered as a whole including parts that teach away from Applicant's invention. Applicant respectfully submits that these criteria are not met in the Examiner's rejections.

In amended claim 26, Applicant claims an implant composition comprising a first component comprising melengestrol acetate, a combination of melengestrol acetate and trenbolone acetate, or a combination of melengestrol acetate, trenbolone acetate and estradiol, contained in a first delivery vehicle of a tablet or pellet capable of immediately releasing said biologically active composition, and a second component comprising the same biologically active composition as in the first component contained in a second delivery vehicle capable of releasing said biologically active composition on a sustained basis. In amended claim 36, Applicant claims a method for delivering the same biologically active material in both a rapid release and sustained release form comprising the steps of providing an implant comprising a first component comprising melengestrol acetate, a combination of melengestrol acetate and trenbolone acetate, or a combination of melengestrol acetate, trenbolone acetate and estradiol, contained in a first delivery vehicle of a tablet or pellet capable of immediately releasing said biologically active composition, and a second component comprising the same biologically active composition as in the first component contained in a second delivery vehicle capable of releasing said biologically active composition on a sustained basis, and injecting said implant into the animal body. Thus, the purpose of Applicant's invention is to provide melengestrol acetate, a combination of melengestrol acetate and trenbolone acetate, or a combination of melengestrol acetate, trenbolone acetate and estradiol in both immediate and sustained release tablet or pellet compositions.

Lewis discloses as his invention the use of specifically designed microparticles for delivery of an agent. He discloses microparticles containing the active agent, in solution or crystalline form, with the active agent dispersed or dissolved within the polymer. (col. 2, line 66 to col. 3, line 2) He cites a formulation containing a growth promoter dispersed in a micro-particle matrix material. (col. 3, lines 63-65) The Herbert reference discloses an invention that relates to the process of preparation of controlled-release microparticles by encapsulating active agents through the use of a solvent system and static mixers. (col. 1, lines 14-18) The Okada reference teaches a method of preparing a water-in-oil emulsion for generating microparticles for sustained release of a drug. (Abstract) For Applicant's methods for preparing the drug, the immediate-release component can be provided in the form of granules or pellets containing the biologically active ingredient and can be formed by conventional granulation practices or through direct compression processes (page 7, line 33 to page 8, line 1). The specification also states that Applicant's methods for preparing the drug includes using "conventional methods that involve the mixing of the ingredients, wet, dry, or fluid-bed granulation, or extrusion/spheronization, followed by screening, drying, screening/sizing, lubrication and compression" (page 8, lines 25-28). The sustained release component is formed as membrane or matrix type systems, or is formed in the same manner as the immediate release component but with different ingredients: "In a preferred embodiment, the biologically active ingredient can be provided in the form of a immediate-release component containing a disintegrating agent and a sustained-release component that does not contain a disintegrating agent" (page 7, lines 30-32). Thus, all three of these references pertain to microparticles as the composition while Applicant's invention pertains to tablets or pellets as the composition. In light of this difference, even when combined the three references would not have made Applicant's invention obvious.

Neither the Lewis nor Okada references pertains to the specific use of melengestrol acetate (MGA), or MGA in combination with trenbolone acetate (TBA), or MGA plus TBA plus estradiol, while this is specifically claimed in amended claims 26 and 36 of the instant application. The Herbert reference mentions melengestrol as a suitable active agent (col. 17, line 62) but this is different than melengestrol acetate as specified in Applicant's claims.

The Examiner states that Figure 1 of Lewis shows an immediate release of the steroid. However, the data show an effective release of active compound as three major peaks, one at approximately days 17-38, another at approximately days 66-77, and the third smaller one at approximately days 91-98. Applicant respectfully submits that this is a perfect example of delayed release. The data within the first 7 days are quite variable and substantially less than these peaks. The Examiner states that figure 11 of

Herbert shows an immediate release of the steroid. However, the data presented in figure 11 is quite variable. The composition probably does not have release rates for each of the peaks. The cause for this variability is thus unknown but could be due to absorption variability or activity of the untethered animals. A smooth curve drawn through the data would show an initial peak for approximately the first 20 days followed by substantial decrease in serum levels. Applicant respectfully submits that this shows ordinary release over a long time period.

The Examiner states that the test for obviousness "is what the combined teachings of the references would have suggested to those of ordinary skill in the art." However, the MPEP (2143.01) teaches that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. However, there is no such suggestion in the references of the desirability of combining the references.

Applicant respectfully submits that due to the amendments to the claims and the above arguments that this rejection is traversed and respectfully requests withdrawal of same.

Claims 26-30, 33, 36-40, and 43-37 remain rejected under 35 USC 103(a) as being unpatentable over Stevens et al. (US patent 5,874,098) for the reasons of record set forth in the prior office actions and for further reasons stated in the Office Action. Applicant respectfully disagrees.

Applicant maintains the arguments set forth in prior responses, as applicable, in addition to the remarks set forth here.

The Stevens reference discloses an antibiotic and pharmaceutical pellet system and method for localized sustained antibiotic release as part of a single therapeutic procedure to prevent infection at the injection site. The Stevens reference does not disclose the immediate and sustained release of the same pharmaceutical agent. In addition, the sustained release of the antibiotic is at the site of injection, while in Applicant's invention, the sustained release of the active composition is for a systemic effect. Thus, the Steven's reference does not teach or suggest Applicant's invention. Applicant respectfully submits that due to the amendments to the claims and the above arguments that this rejection is traversed and respectfully requests withdrawal of same.

Claims 26, 29-33, 36, and 39-47 remain rejected under 35 USC 103(a) as being unpatentable over Rickey et al. (US patent 5,792,477) for the reasons of record set forth in the prior office actions and for further reasons stated in the Office Action. Applicant respectfully disagrees.

Applicant maintains the arguments set forth in prior responses, as applicable, in addition to the remarks set forth here.

The Rickey reference relates to " microparticles having a reduced level of residual solvent(s) and to a method for the preparation of such microparticles (col. 1, lines 12-14) while Applicant's invention pertains to tablets or pellets as the composition. The Rickey reference mentions melengestrol as a suitable active agent (col. 13, line 25) but this is different than melengestrol acetate as specified in Applicant's claims. Applicant respectfully submits that due to the amendments to the claims and the above arguments that this rejection is traversed and respectfully requests withdrawal of same.

**V. Conclusion.**

In view of the amendments and remarks made herein, Applicant respectfully submits claims 26-28, 32-38, and 42-47 are in condition for allowance and respectfully requests expedited notification of same. If the Examiner has any questions, he is encouraged to contact the undersigned at the telephone number below.

Respectfully submitted,

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